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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 331 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

SAYAJI IRON & ENGG. CO.PVT. LTD.

Appearance:

MR AKIL QURESHI FOR MR MANISH R BHATT for Applicant.

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 16/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

The following two questions have been referred for the opinion of this Court at the instance of the revenue :

1 "Whether on the facts and in the circumstances of the case and in law, the Appellate Tribunal was right in holding that the sales tax paid after the close of the previous year but before the due date of filling of return u/s.139(1) was an allowable deduction in A.Y.1984-85 when the provision to section 43B was inserted with effect from 1st April,1988?"

2 "Whether on the facts and in the circumstances of the case and in law the Tribunal was right in holding that the disallowance out of travelling expenses under the provisions of rule 6-D of the I.T.Rules should be worked out by aggregating the expenditure on all tours undertaken by an employee during the year, instead of working out the disallowance for each such tour?"

2 The assessment year is 1984-85. We have heard Mr.Akil Qureshi, learned Counsel for the revenue. Though served none appears for the assessee.

3 It was fairly pointed out by Mr.Qureshi that first question stands concluded by the decision of the Apex Court in the case of Allied Motors (P) Ltd. vs. C.I.T., 224 ITR 677. Following the said decision we answer the first question in the affirmative i.e. in favour of the assessee and against the revenue.

4 So far as the second question is concerned, our attention was drawn to a decision of this Court in Income Tax Reference No.54 of 1988. Following the said decision we hold that the Tribunal was not right in computing the disallowance of travelling expenses under section 6D of the Income Tax Rules by aggregating the expenditure on all tours undertaken by an employee during the year instead of working out the disallowance for each tour. Accordingly, the second question is answered in the negative i.e. in favour of the revenue and against the assessee.

4 The reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-
(M.S.Shah, J) (D.A.Mehta,J)

m.m.bhatt